

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

**BARBARA SCHWAB et al., individually and  
on behalf of all others similarly situated,**

**Plaintiffs,**

**V.**

**PHILIP MORRIS USA, INC. et al.,**

**Defendants.**

**No. CV 04-1945 (JBW)**

MEMORANDUM AND ORDER  
ON PLAINTIFFS' MOTION FOR  
EXCLUSION OF TESTIMONY THAT  
"LIGHT" CIGARETTES ARE SAFER

**JACK B. WEINSTEIN, Senior District Judge:**

Plaintiffs move to exclude all testimony by experts for defendants that “light” cigarettes are safer than regular cigarettes. *See* Pls.’ Mot. (Docket No. 691). In this connection they would exclude the testimony of Dr. Kenneth A. Mundt, an epidemiologist, and of two statisticians, Dr. Lawrence S. Mayer and Dr. William E. Wecker. They would also exclude defendants’ proposed chemistry experts Dr. Jane Y. Lewis, Dr. Kenneth F. Podraza, Dr. Jeffrey Gentry and Dr. Edward A. Robinson; and toxicologists Dr. Andrew T. Mosberg and Dr. Carr J. Smith. Pls.’ Mem. 1-2 (Docket No. 691-2).

The evidence on the safety of “light” cigarettes, with less tar, in general, than regular cigarettes is central to the issue of fraud in this case. Such evidence cannot be excluded without so distorting the trial as to make it administratively bizarre.

Insofar as the plaintiffs are challenging the probative force of defendants' experts, they raise a *Daubert* issue. That issue will be separately addressed.

The motion is denied.

S<sup>3</sup> ORDERED.

/s/

Jack B. Weinstein

Dated: September 27, 2005  
Brooklyn, New York